

UNITED STATES OF AMERICA,

Plaintiff,

v.

HARRY J. SMITH, JR.,
TERRELL L. LORD, and
LISA J. LORD,

Defendants.

CA 98-

STATE OF MAINE,

Plaintiff,

v.

HARRY J. SMITH, JR.,
TERRELL L. LORD,
LISA J. LORD, and
UNITED STATES OF AMERICA,

Defendants.

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred for response actions taken and to be taken at or in connection with the release or threatened release of hazardous substances at the Eastern Surplus Company Superfund Site (the "Site"). The defendants named in the United States' Complaint are Harry J. Smith, Jr., Terrell L. Lord, and Lisa J. Lord ("Settling Defendants").

B. The State of Maine (the "State"), on behalf of the Maine Department of Environmental Protection ("DEP"), has also filed a complaint in this matter pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, and the Maine Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. §§ 1361-1371. In its complaint, the State seeks reimbursement of response costs incurred and to be incurred for response actions taken and to be taken at or in connection with the release or threatened release of hazardous substances at the Site. The defendants named in the State's Complaint are the Settling Defendants and the United States.

C. The Settling Defendants allege that they have contribution claims under Section 113 of CERCLA, 42 U.S.C. § 9613, against the Settling Federal Agencies.

D. The Site is a five-acre facility located in Meddybemps, Washington County, Maine. The Site abuts Meddybemps Lake, Dennys River, Route 191, and Stone Road. Each Settling Defendant currently owns a portion of the Site. From approximately 1946 to 1985, a salvage

company operated at the Site, and Defendant Smith was a co-operator of the company for some of that time period.

E. In 1985, after contamination was discovered at the Site, the Maine DEP initiated a removal action to stabilize the Site. In 1986, EPA took over the removal action from the Maine DEP. This removal action involved the inspection, evaluation, sampling, and disposal of drums, transformers, and other containers of hazardous substances located at the Site. In 1987, the United States Department of Defense entered into a Memorandum of Understanding and Agreement with EPA to remove gas cylinders from the Site. The EPA removal action was completed in 1990.

F. In 1993, the State of Maine brought an action against the United States in the United States District Court for the District of Maine to recover past response costs incurred by the State in connection with actions taken by the State with respect to materials and equipment that Settling Defendant Smith purchased from the United States Department of Defense and found at the Site. Civil Action No. 93-167B (D. Me.). The parties to that suit entered into a settlement for all costs that the State incurred on or prior to December 31, 1993.

G. In August 1995, pursuant to Section 122(h) of CERCLA, 42 U.S.C. § 9622(h), EPA entered into an administrative cost recovery agreement with the United States Department of Defense. EPA CERCLA Docket No. I-93-1044. The administrative agreement provided for reimbursement to EPA of a portion of its response costs in full satisfaction of EPA's claim for any and all civil liability of the United States Department of Defense under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for reimbursement of response costs incurred by EPA through January 30, 1996, the effective date of that agreement.

H. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 17, 1996. 61 Fed. Reg. 30,510 (June 17, 1996).

I. In July 1996, in response to a release or a substantial threat of a release of hazardous substances at or from the Site and pursuant to 40 C.F.R. § 300.430, EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") to characterize the nature and scope of contamination at the Site and to identify remedial alternatives to address the contamination.

J. EPA anticipates completing the RI/FS in 1999. Preliminary results of the RI/FS have revealed sources of contamination warranting an early response action. As a result, in July 1998, EPA issued an Action Memorandum which authorizes the excavation and off-site disposal of contaminated soils above cleanup levels and an interim groundwater control system. EPA intends to implement the response actions set forth in the 1998 Action Memorandum and anticipates issuing a Record of Decision for the remedial action at the Site in 1999.

K. In May 1998, in accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of the Interior and the National Oceanic and Atmospheric Administration of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

L. Settling Defendant Smith has provided the United States with information documenting his financial condition and supporting his contentions that he cannot afford to reimburse the United States for response costs at the Site. After reviewing this information,

the United States has determined that the settlement embodied herein represents an appropriate resolution of the United States' claim against Smith for unreimbursed costs incurred or to be incurred by the United States in responding to the release and threatened release of hazardous substances at the Site.

M. The Settling Defendants do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints of the State and the United States. Nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the human health or the environment. The Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted, or that could be asserted, by the Settling Defendants or in any claim by the State.

N. The objectives of the Parties in entering into this Consent Decree are to protect human health and the environment at the Site, to reimburse response costs of the Plaintiffs, and to resolve the claims of the Plaintiffs against Settling Defendants and the claims of the State and Settling Defendants which have been or could have been asserted against the United States with regard to this Site.

O. The United States, the State, and the Settling Defendants agree, and the Court entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over the United States, the State, and the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, the Settling Defendants, the United States, and the State waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter this Consent Decree. Settling Defendants, the United States, and the State shall not challenge this Court's jurisdiction to enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, on behalf of EPA and the Settling Federal Agencies, upon the State, and upon Settling Defendants and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation,

and Liability Act of 1980, 42 U.S.C. §§ 9601-9675, as amended.

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOD" shall mean the United States Department of Defense, and all of its components, including the United States Defense Logistics Agency, and any successor departments, agencies, or instrumentalities.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507, or any successor fund or Treasury account as may be designated in the future for receipt of cost recovery payments under CERCLA.

h. "GSA" shall mean the United States General Services Administration, and all of its components, including the Federal Supply Service, and any successor departments, agencies, or instrumentalities.

i. "Interest" shall mean interest at the rate specified for interest on investments of the

Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

j. "Operation and Maintenance" shall mean all activities required to maintain the effectiveness of the Remedial Action.

k. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

l. "Parties" shall mean the United States, the State of Maine, and the Settling Defendants.

m. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, and any modified standards established by EPA.

n. "Plaintiffs" shall mean the United States on behalf of EPA, and the State of Maine on behalf of DEP.

o. "Record of Decision" or "ROD" shall mean the EPA Record(s) of Decision for any future response actions, and all attachments and amendments thereto, at the Eastern Surplus Company Superfund Site.

p. "Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by EPA and the State to implement the ROD.

q. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

r. "Settling Defendants" shall mean Harry J. Smith, Jr., Terrell L. Lord, and Lisa J. Lord.

s. "Settling Federal Agencies" shall mean DOD and GSA, as those entities are defined in this Section.

t. "Site" shall mean the Eastern Surplus Company Superfund Site, encompassing four to five acres and abutting Meddybemps Lake, Dennys River, Route 191, and Stone Road. The Site is located in Meddybemps, Washington County, Maine, and its approximate boundaries are depicted generally on the map included as Appendix A to this Consent Decree.

u. "State" shall mean the State of Maine and all of its departments, institutions, agencies, and other instrumentalities of the State of Maine, including, but not limited to, the Maine Atlantic Salmon Authority.

v. "State Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the State has incurred or will incur at or in connection with the Site, including interest, but not including amounts paid or reimbursed to the State by EPA, *provided, however*, that for purposes of Paragraphs 6.b. and 6.d., such State Response Costs shall not include any costs either (1) incurred by the State more than thirty (30) years after EPA's issuance of the Certification of Completion of Remedial Action; or (2) presented for payment more than thirty (30) years after EPA's issuance of the Certification of Completion of Remedial Action.

w. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

x. "United States Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA, or DOJ on behalf of EPA, has incurred or will incur at or in connection with the Site, including interest, *provided, however*, that for purposes of

Paragraphs 5.b. and 5.e., such United States Response Costs shall not include any costs either (1) incurred by EPA, or the Department of Justice on behalf of EPA, more than ten (10) years after EPA's issuance of the Certification of Completion of Remedial Action; or (2) presented for payment more than ten (10) years after EPA's issuance of the Certification of Completion of Remedial Action.

y. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous substance" under the Maine Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. § 1362(1).

V. DISPOSITION OF PROPERTY BY SETTLING DEFENDANTS

4. a. After entry of this Consent Decree, within ninety (90) days of notice from EPA and the State, and within two years from the effective date of this Consent Decree, Settling Defendants Terrell L. Lord and Lisa J. Lord ("the Lords") shall convey title to and all interest in their real property located as shown in Appendix B to this Consent Decree to the State. The Lords shall receive no additional consideration, either monetary or non-monetary, for the transfer of this real property. The rights relinquished by the State and the United States in this Consent Decree as to the Lords shall constitute good and fair consideration for the real property conveyed by the Lords. The boundaries of the Lords' real property to be conveyed are depicted generally on the map included as Appendix B to this Consent Decree.

b. (i) Settling Defendant Smith shall make good faith efforts to remove any and all liens on all real property owned by him that is located within the Site. After entry of this

Consent Decree and after it is determined by EPA and the State that he is able to transfer adequate title, within ninety (90) days of notice from EPA and the State, Settling Defendant Harry J. Smith ("Defendant Smith") shall convey title to and all interest in his real property located within the Site to the State. Defendant Smith shall receive no additional consideration, either monetary or non-monetary, for the transfer of this real property. The boundaries of Defendant Smith's real property to be conveyed are depicted generally on the map included as Appendix B to this Consent Decree.

(ii) By August 31, 1998, Defendant Smith shall remove all debris and/or personal property which he owns or controls at the Site. Any such debris and/or personal property left at the Site after August 31, 1998 shall be deemed abandoned and Defendant Smith shall have no claim for compensation for any personal property remaining on the Site after August 31, 1998. With regard to the activities undertaken pursuant to the requirements of this Paragraph 4.b.(ii), any contractor or subcontractor utilized shall be deemed to be in a contractual relationship with Defendant Smith within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). The United States and the State do not assume any liability under this Paragraph 4.b.(ii). Defendant Smith shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Defendant Smith, his employees, agents, contractors, subcontractors, and any persons acting on his behalf or under his control, in carrying out activities pursuant to this Consent Decree. Further, Defendant Smith agrees to pay the United States and the State all costs they incur including, but not

limited to, attorney's fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Defendant Smith, his employees, agents, contractors, subcontractors, and any persons acting on his behalf or under his control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Defendant Smith in carrying out activities pursuant to this Consent Decree. Neither Defendant Smith nor any such contractor shall be considered an agent of the United States or the State.

(iii) The rights relinquished by the State and the United States in this Consent Decree as to Defendant Smith shall constitute good and fair consideration for the obligations imposed on Defendant Smith by this Consent Decree.

c. The State shall assume no liability under CERCLA or the Maine Uncontrolled Hazardous Substance Sites Law by virtue of the transfers of real property pursuant to this Paragraph 4. After obtaining title to this real property, the State shall, consistent with the requirements of Section XII of this Consent Decree, provide access to EPA to the property transferred, and comply with any existing covenants, conditions, or restrictions or any request by EPA for the implementation of any covenants, conditions, and restrictions to be determined by EPA to be necessary as to the use of the property transferred. After obtaining title to this real property, the State may also transfer such property to a third party, *provided, however*, that any such transfer of the property, or any portion thereof, shall take place only if the grantee agrees, as a part of the agreement to purchase or otherwise obtain the property, that it will provide access to the property transferred, and comply with any existing covenants,

c. Payment of the amounts set forth in Paragraph 5.a. and Paragraph 5.b. shall be made to EPA Superfund account number ALC 68010030 in accordance with current procedures of the federal On-Line Payment and Collection System ("OPAC"), referencing EPA Region I, Site/Spill Identification Number 01-89, and DOJ Case Number 90-11-2-06059. Any payments received after 4:00 p.m. Eastern Time shall be credited on the next business day. Notice shall be sent to EPA that payment has been made in accordance with Section XV ("Notices and Submissions") and to Michael Manlogon, Financial Management Officer, U.S. Environmental Protection Agency, JFK Federal Building, Mail Code MFC, Boston, MA 02203-2211.

Address
to be
changed.

d. If the payments required by Paragraphs 5.a. and 5.b. are not made as soon as reasonably practicable, the EPA Region I Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section.

e. For purposes of calculation of the amount of payments due pursuant to Paragraph 5.b. hereof, the following shall apply:

(i) The United States Response Costs amount referenced in Paragraph 5.b. which triggers the obligation of the Settling Federal Agencies to make additional payments shall be computed exclusive of all United States Response Costs that were reimbursed to or incurred by EPA on or before January 30, 1996, such costs having been the subject of the Administrative Agreement (EPA CERCLA Docket No. I-93-1044) between DOD and EPA.

(ii) The Settling Federal Agencies' obligation to make payments pursuant to Paragraph 5.b. shall be triggered only when the United States Response Costs exceed an

conditions, or restrictions or any request by EPA for the implementation of any covenants, conditions, and restrictions to be determined by EPA to be necessary as to the use of the property transferred. Any deed, title, or other instrument of conveyance shall contain a notice that the property is the subject of this Consent Decree.

**VI. REIMBURSEMENT OF RESPONSE
COSTS BY SETTLING FEDERAL AGENCIES**

5. Payment to Hazardous Substance Superfund.

a. As soon as reasonably practicable after the effective date of this Consent Decree, the United States, on behalf of the Settling Federal Agencies, shall pay \$11,287,000.00 into the Eastern Surplus Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site. This payment amount includes a payment of \$1,107,000.00 made in consideration of EPA agreeing to the limitation on United States Response Costs set forth in Paragraph 3.x. of this Consent Decree. Any balance remaining in the Eastern Surplus Special Account after the issuance of the Certification of Completion of the Remedial Action may be transferred by EPA to the EPA Hazardous Substance Superfund.

b. As limited by, and in accordance with, Paragraph 5.e. hereof, in the event that the United States Response Costs at the Site exceed \$11,977,000.00 and as soon as reasonably practicable after the date payment is requested by EPA, the United States, on behalf of the Settling Federal Agencies, shall pay to the Eastern Surplus Special Account with the EPA Hazardous Substance Superfund eighty-five percent (85%) of the amount by which such United States Response Costs exceed \$11,977,000.00.

Paragraph 5.b. shall be triggered only when the United States Response Costs exceed an amount calculated by adding to the \$11,977,000.00 amount set forth in Paragraph 5.b. an amount equal to the interest earned on the portion of the United States Response Costs paid pursuant to Paragraph 5.a. devoted to the performance of the Remedial Action and the Operation and Maintenance activities conducted by EPA, calculated at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, commencing on the date that the payments made pursuant to Paragraph 5.a. of this Consent Decree are received by EPA, compounded annually on October 1 of each year, and taking into account the depletion of principal during the period prior to a demand for payment.

6. Payment of State Response Costs.

a. As soon as reasonably practicable after the effective date of this Consent Decree, the United States, on behalf of the Settling Federal Agencies, shall pay to the State of Maine \$2,082,000.00 (an amount equal to eighty-five percent (85%) of \$2,220,000.00, adjusted upward by the amount of \$205,000.00 to be paid in consideration of the State agreeing to the limitation on State Response Costs set forth in Paragraph 3.v. of this Consent Decree, and then adjusted downward for the estimated value of the real property to be received by the State pursuant to Paragraph 4.a. of this Consent Decree), for deposit in the Maine Uncontrolled Sites Fund, to be used to conduct or finance the response actions at or in connection with the Site.

b. As limited by, and in accordance with, Paragraph 6.d. hereof, in the event that the State Response Costs at the Site exceed \$2,220,000.00 and as soon as reasonably practicable after the date payment is requested by the State, the United States, on behalf of the Settling

State Response Costs exceed \$2,220,000.00 ("State Additional Costs"). The State will send the Settling Federal Agencies (with a concurrent copy to the Chief, Environmental Defense Section, at the address provided in Section XV of this Consent Decree) a bill requiring payment of these State Additional Costs that includes a cost summary setting forth the costs incurred by the State. The State Additional Costs shall be documented by the following, as appropriate, or their equivalents: financial management system reports, and primary contractor invoices provided to the State (not including backup contractor documents not routinely provided to the State under the contract). Unless otherwise agreed by the Parties, the State shall provide the Settling Federal Agencies with one copy of such supporting documentation, exclusive of any confidential business information and Privacy Act information at the time the bill is sent. The Settling Federal Agencies agree that such documentation shall be deemed to constitute sufficient documentation of the State's expenditures for purposes of any dispute or other enforcement actions for reimbursement of the State Additional Costs.

c. Payment of the amounts set forth in Paragraph 6.a. and 6.b. shall be made via electronic fund transfer in accordance with instructions to be received from the State and pursuant to the payment procedures of the United States. Notice of payment of the amounts set forth in Paragraphs 6.a. and 6.b. shall be sent to the State in accordance with Section XV ("Notices and Submissions") and to Mark Hyland, Director, Maine Department of Environmental Protection, Bureau of Remediation and Waste Management, Division of Remediation, State House Station 17, Augusta, ME 04333.

d. For purposes of calculation of the amount of payments due pursuant to Paragraph 6.b. hereof, the following shall apply:

(i) The State Response Costs amount referenced in Paragraph 6.b. which triggers the obligation of the Settling Federal Agencies to make additional payments shall be computed exclusive of all State Response Costs that were reimbursed to or incurred by the State on or before December 31, 1993, such costs having been the subject of the Consent Order between DOD and the State dated January 18, 1994, in Civil Action No. 93-167B (D. Me).

(ii) The Settling Federal Agencies' obligation to make payments pursuant to Paragraph 6.b. shall be triggered only when the State Response Costs exceed an amount calculated by adding to the \$2,220,000.00 amount set forth in Paragraph 6.b. an amount equal to the interest earned on \$1,877,000.00 calculated at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, commencing on the date that the payments made pursuant to Paragraph 6.a. of this Consent Decree are received by the State, compounded annually on October 1 of each year, and taking into account the depletion of principal during the period prior to a demand for payment.

7. a. In the event that the payments required by Paragraphs 5.a. and 6.a. are not made within thirty (30) days of the effective date of this Consent Decree, the United States, on behalf of the Settling Federal Agencies, shall pay Interest on the unpaid balance commencing on the effective date of this Consent Decree and accruing through the date of the payment.

b. In the event that the payments required by Paragraphs 5.b. and 6.b. are not made within sixty (60) days of the date the demand for payment is received, the United States, on behalf of the Settling Federal Agencies, shall pay Interest on the unpaid balance commencing on the date the demand for payment is received and accruing through the date of the payment.

8. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that the Settling Federal Agencies obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

9. Interest on Late Payments. In the event that any payment required by Section VII, Paragraph 10 ("Stipulated Penalty"), is not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

10. Stipulated Penalty.

a. If any Settling Defendant does not comply with Section V ("Disposition of Property By Settling Defendants") or Section XII ("Access"), such Settling Defendant shall pay to EPA and the State, as a stipulated penalty, \$1000 and \$250, respectively, per violation per day of such noncompliance.

b. If any Settling Defendant does not comply with any other provision of this Consent Decree, such Settling Defendant shall pay to EPA and the State, as a stipulated penalty, \$500 and \$125, respectively, per violation per day of such noncompliance.

c. The stipulated penalties due pursuant to Paragraphs 10.a. and 10.b. are due and payable within 30 days of the date of the demand for payment of the penalties by EPA and/or the State. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

EPA Region I, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251. All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, Region I and Site/Spill ID Number 01-89, and DOJ Case Number 90-11-2-06059. Copies of check(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to EPA and DOJ as provided in Section XV (Notices and Submissions) and to Michael Manlogon, Financial Management Officer, U.S. Environmental Protection Agency, 1 Congress Street, Suite 1100 - Mail Code MFC, Boston, MA 02114-2023.

d. All payments to the State under this Paragraph shall be made in accordance with instructions to be provided by the State.

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA or the State has notified Settling Defendants of the violation or made a demand for payment but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, the Settling Defendant or Defendants against whom such action is brought shall reimburse the United States and the State for all costs of such action, including but not limited to costs of attorney time and court fees.

12. Payments made under Paragraphs 9-11 shall be in addition to any other remedies

or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States and/or the State, as applicable, may, in their own unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VIII. COVENANTS BY THE PLAINTIFFS

14. a. Covenants by United States to Settling Defendants

In consideration of the actions that will be performed by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 14.c., 14.d., and 16, the United States, on behalf of EPA, covenants not to sue or take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), relating to the Site. Except with respect to future liability, these covenants shall take effect for each Settling Defendant upon compliance by him or her with Paragraph 4 of this Consent Decree. With respect to future liability, these covenants shall take effect upon issuance of the Certification of Completion of the Remedial Action by EPA. These covenants are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. With respect to Defendant Smith, these covenants are also conditioned upon the accuracy, veracity, and completeness of the financial information provided to the United States by him. If the financial information is subsequently determined to have been misleading, false, or materially inaccurate at the time it was provided by Defendant Smith, these covenants shall be null and void as to him. These covenants extend only to Settling Defendants and do not extend to any other person.

b. Covenants to Settling Federal Agencies

In consideration of the payments that will be made by the Settling Federal Agencies under the terms of this Consent Decree, and except as specifically provided in Paragraphs 14.c., 14.d., and 16, EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), relating to the Site, or with respect to any debris and/or personal property removed from the Site pursuant to Paragraph 4. Except with respect to future liability, EPA's covenants shall take effect upon the receipt by EPA of the payment required by Paragraph 5.a. With respect to future liability, EPA's covenants shall take effect upon issuance of the Certification of Completion of the Remedial Action by EPA. EPA's covenants are conditioned upon the satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree. EPA's covenants extend only to the Settling Federal Agencies and do not extend to any other persons.

c. United States' pre-certification reservations

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel all or any of the Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies (1) to perform further response actions relating to the Site, or (2) to reimburse the United States for additional costs of response, if, prior to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part, and EPA determines, based on these previously unknown conditions or information together with any other relevant information, that the Remedial Action is not protective of human health or the environment.

d. United States' post-certification reservations

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies (1) to perform further response actions relating to the Site, or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received, in whole or in part, and EPA determines, based on these previously unknown conditions or this information together with other relevant information, that the Remedial Action is not protective of human health or the environment.

e. For purposes of Paragraph 14.c., the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of the lodging of this Consent Decree. For purposes of Paragraph 14.d., the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the

Record of Decision, the administrative record supporting the Record of Decision, or in any information received by EPA in connection with the performance of the Remedial Action prior to Certification of Completion of the Remedial Action.

15. a. Covenants Not to Sue by the State

In consideration of the payments and conveyances that will be made by the Settling Federal Agencies and Settling Defendants, respectively, under the terms of this Consent Decree, and except as specifically provided in Paragraphs 15.b., 15.c., and 16, the State, on behalf of the Department of Environmental Protection, covenants not to sue or to take administrative actions against the Settling Federal Agencies and/or the Settling Defendants pursuant to Sections 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f), and the Maine Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. §§ 1364 and 1365, and other applicable State laws, including common law, relating to the Site, and, in addition, covenants not to sue or to take administrative actions against the Settling Federal Agencies pursuant to Sections 107(a) and 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(f), and the Maine Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. §§ 1364 and 1365, and other applicable State laws, including common law, with respect to any debris and/or personal property removed from the Site pursuant to Paragraph 4. Except with respect to future liability, these covenants by the State shall take effect for each Settling Defendant upon his or her compliance with Paragraph 4 of this Consent Decree and, for the Settling Federal Agencies, upon receipt by the State of the payment required by Paragraph 6.a. of this Consent Decree. With respect to future liability this covenant not to sue by the State shall take effect upon issuance of the Certification of Completion of the Remedial Action by EPA. These

covenants by the State are conditioned upon the complete and satisfactory performance by Settling Defendants and the Settling Federal Agencies of their obligations under this Consent Decree. With respect to Settling Defendant Smith, these covenants are also conditioned upon the accuracy, veracity, and completeness of the financial information provided to the United States by him. If the financial information is subsequently determined to have been misleading, false, or materially inaccurate at the time it was provided by Defendant Smith, these covenants shall be null and void as to him. These covenants by the State extend only to the Settling Federal Agencies and Settling Defendants and do not extend to any other persons.

b. State's pre-certification reservations

Notwithstanding any other provision of this Consent Decree, the State on behalf of the Department of Environmental Protection, reserves, and this Consent Decree is without prejudice to, any right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Sections 107 or 113(f) of CERCLA, 42 U.S.C. §§ 9607 or 9613(f), or under the Maine Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. §§ 1361-1371, seeking to compel all or any of Settling Defendants and/or the Settling Federal Agencies (1) to perform other response actions relating to the Site or (2) to reimburse the State for additional costs of response, to the extent that EPA has determined that any response actions required or taken under (1) or (2) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, prior to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to the State, are discovered; or
- (ii) information, previously unknown to the State is received by the State, in

whole or in part,

and the Commissioner of the Department of Environmental Protection, or his or her delegate, determines, pursuant to 38 M.R.S.A. §§ 1364-1367, based on these previously unknown conditions or information together with any other relevant information, that the Remedial Action is not protective of the public health, safety or welfare or the environment. The United States reserves all rights and defenses it may have under applicable law to oppose any determinations made or any actions taken, ordered, or proposed by the State pursuant to this Paragraph.

c. State's post-certification reservations

Notwithstanding any other provision of this Consent Decree, the State on behalf of the Department of Environmental Protection, reserves, and this Consent Decree is without prejudice to, any right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Sections 107 or 113(f) of CERCLA, 42 U.S.C. §§ 9607 or 9613(f), or under the Maine Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. §§ 1361-1371, seeking to compel the Settling Federal Agencies and/or the Settling Defendants (1) to perform other response actions relating to the Site or (2) to reimburse the State for additional costs of response, to the extent that EPA has determined that any response actions required or taken under (1) and (2) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, subsequent to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to the State, are discovered, or
- (ii) information, previously unknown to the State, is received by the State, in

whole or in part,
and the Commissioner of the Department of Environmental Protection, or his or her delegate, determines, pursuant to 38 M.R.S.A. §§ 1364-1367, based on these previously unknown conditions or this information together with other relevant information, that the Remedial Action is not protective of the public health, safety or welfare or the environment. The United States reserves all rights and defenses it may have under applicable law to oppose any determinations made or any actions taken, ordered, or proposed by the State pursuant to this Paragraph.

d. For purposes of Paragraph 15.b., the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date of lodging of this Consent Decree. For purposes of Paragraph 15.c., the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, or in any information received by the State in connection with the performance of the Remedial Action prior to Certification of Completion of the Remedial Action.

16. Reservation of Rights by the United States and the State

a. The covenants set forth in Paragraphs 14.a., 14.b., and 15.a. do not pertain to any matters other than those expressly specified therein. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants; and EPA, the federal natural resources trustees, and the State reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all other

matters, including but not limited to:

- (i) claims based on a failure by Settling Defendants or Settling Federal Agencies to meet a requirement of this Consent Decree;
- (ii) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site, except with respect to Settling Defendant Smith's removal of debris and/or personal property from the Site pursuant to Paragraph 4.b.(ii) of this Consent Decree;
- (iii) liability for future disposal of Waste Material at the Site, other than as provided in the ROD or otherwise ordered by EPA;
- (iv) liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss;
- (v) criminal liability;
- (vi) liability for violations of federal or state law; and
- (vii) liability of the Settling Defendants for the imposition of such deed restrictions or institutional controls as required by the ROD for the Site.

b. If the United States determines that the financial information provided to the United States by Defendant Smith was materially false, misleading, or inaccurate at the time it was provided by him, or that his ability to pay has, in light of all circumstances, materially increased between the time such financial information was submitted to the United States and the time Smith executes this Consent Decree, then notwithstanding any other provision of this Consent Decree, including Paragraphs 14.a. and 15.a. hereof, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to reinstate or reopen this

action, or to commence a new action against Defendant Smith.

**IX. COVENANTS BY SETTLING DEFENDANTS
AND SETTLING FEDERAL AGENCIES**

17. a. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

(i) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 107, 111, 112, 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of law;

(ii) any claims under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and any claims under State law, including the Maine Uncontrolled Hazardous Substance Sites Law, 38 M.R.S.A. §§ 1361-1371, that are related to the Site;

(iii) any claims arising out of response activities at the Site, including claims based on EPA's and the State's selection of response actions, oversight of response activities, or approval of plans for such activities;

(iv) any claims (including both injunctive claims and claims for monetary damages) for costs, attorney's fees, other fees, or expenses related to the Site or this Consent Decree, or incurred in these civil actions, including claims under 28 U.S.C. § 2412 (including, but not limited to, claims under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412(d)); and

(v) any claim under the United States Constitution, State Constitution, Tucker

Act, 28 U.S.C. § 1491, or common law, or arising out of or relating to past or future access to, imposition of covenants, conditions, and restrictions on, or other restrictions on the use or enjoyment of the property, real or personal, of any of the Settling Defendants, the Site, or any property owned or controlled by the Settling Defendants affected by the covenants, conditions, and restrictions and access rights herein, or adjacent to the Site, or response activities at the Site; any claim arising out of the release or threatened release of Waste Materials into the environment at the Site or on the property of any of the Settling Defendants; or any claim relating to the value, removal, and/or disposal, pursuant to Paragraph 4.b.(ii), of debris and/or personal property of Defendant Smith located at the Site.

b. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, or any other provision of law with respect to the Site, United States Response Costs or State Response Costs, or this Consent Decree.

18. The Settling Defendants reserve, and this Consent Decree is without prejudice to:

(a) claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. Any such claim shall not, however, include a claim for any damages caused, in whole or in part, by the act or omission of any person,

including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of any Settling Defendant's plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA; and (b) contribution claims against the Settling Federal Agencies or any other Settling Defendant in the event any claim is asserted by the United States or the State against any of the Settling Defendants under the authority of or pursuant to applicable provisions of Paragraphs 14-16 of Section VIII ("Covenants by the Plaintiffs"), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States or the State against any of the Settling Defendants.

19. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

X. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

20. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

21. In recognition of the Settling Federal Agencies' payment(s) to the State pursuant to

Paragraph 6 of this Consent Decree, the State agrees to meet its statutory obligations under Section 104(c)(3) of CERCLA, 42 U.S.C. § 9604(c)(3). The State further agrees that, pursuant to Section 104(j) of CERCLA, 42 U.S.C. § 9604(j), and 40 C.F.R. § 300.510(f), subsequent to completion of the Remedial Action, it will accept transfer of any property or interest in real property that the United States has acquired in order to conduct the Remedial Action or Operation and Maintenance.

22. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and the Settling Federal Agencies are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and 38 M.R.S.A. § 348(4), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are United States Response Costs, State Response Costs, implementation of the ROD, and any response costs arising out of the transportation of debris and/or personal property from the Site pursuant to Paragraph 4.b.(ii). The "matters addressed" in this settlement do not include those response costs or response actions as to which the Plaintiffs have reserved their rights under this Consent Decree (except for claims for failure to comply with this Decree) in the event that the United States or the State asserts rights against Settling Defendants or the Settling Federal Agencies, respectively, within the scope of such reservations.

23. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA, DOJ, and the State in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought

against it for matters related to this Consent Decree, it will notify EPA, DOJ, and the State in writing within ten (10) days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA, DOJ, and the State within ten (10) days of service or receipt of any Motion for Summary Judgment, and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; *provided, however*, that nothing in this Paragraph affects the enforceability of the covenant by Plaintiffs set forth in Section VIII.

25. Nothing in this Consent Decree shall be construed as a waiver of the United States' sovereign immunity under Section 120(a)(4) of CERCLA, 42 U.S.C. § 9620(a)(4).

XI. CERTIFICATION OF COMPLETION

26. As soon as reasonably practicable after such a certification is possible, and after a reasonable opportunity for review and comment by the State, EPA will certify in writing that the Remedial Action has been fully performed and the Performance Standards have been attained. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including but not limited to, Section VIII ("Covenants By The Plaintiffs"). Certification shall not affect Settling Defendants' or Settling

Federal Agencies' obligations under this Consent Decree, including, but not limited to, those set forth in Sections V, VI and VII.

XII. ACCESS

27. a. Commencing upon the date of lodging of this Consent Decree, Settling Defendants agree to provide the United States, the State, and their representatives, including EPA and its contractors, access at all reasonable times to the Site and to such other property as is delineated in Appendix C hereto owned or controlled by Settling Defendants to which access is determined by EPA to be required for the implementation of this Consent Decree, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- (i) Monitoring of investigation, removal, remedial, or other activities at the Site;
- (ii) Verifying any data or information submitted to the United States or the State;
- (iii) Conducting investigations relating to contamination at or near the Site;
- (iv) Obtaining samples;
- (v) Planning, implementing, or assessing the need for response actions at or near the Site;
- (vi) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XIII ("Access to Information");
- (vii) Assessing Settling Defendants' compliance with this Consent Decree; and
- (viii) Determining whether the Site or other property is being used in a manner

that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

b. Commencing on the date of lodging of this Consent Decree, Settling Defendants shall refrain from using the Site, or such other property as is delineated in Appendix C hereto owned or controlled by Settling Defendants, in any manner that would interfere with or adversely affect the integrity or protectiveness of the measures to be implemented by EPA or the State at the Site. Such restrictions include, but are not limited to, disturbance of Waste Materials at the Site except as authorized by EPA or required by this Consent Decree, installation and/or operation of any water supply wells and/or placement of any materials or debris onto the Site.

c. If EPA so requests, Settling Defendants shall execute and record in the Registry of Deeds or other appropriate land records office of Washington County, State of Maine, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 27.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 27.b. of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, and/or (iii) other appropriate grantees. Such Settling Defendants shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such

property:

i. A draft easement, that is enforceable under the laws of the State of Maine, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Recorder's Office or other appropriate office of Washington County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

d. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

28. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C.

§ 6927, and any other applicable statutes or regulations.

29. Any interest in any of the property held by Settling Defendants and delineated in Appendix C hereto may be transferred only upon prior written approval of EPA, after opportunity for review and comment by the State, *provided, however*, that this Paragraph shall not be construed to authorize a transfer of the land described in Appendix B other than as set forth in Paragraph 4. At least sixty (60) days prior to the date of any proposed transfer, a Settling Defendant shall notify EPA and the State in writing of such proposed transfer, including the name of the proposed grantee, a description of the grantee's proposed use of the property to be transferred or interest therein, a description of the terms and obligations of the Settling Defendant under this Consent Decree proposed to be performed by such grantee, and a written agreement signed by the grantee to assume those proposed terms and obligations of the Settling Defendant under this Consent Decree. EPA may disapprove of the transfer of any interest in the property, if EPA, after opportunity for review and comment by the State, determines that the contemplated use of the property by the grantee may interfere with or is inconsistent with the response actions taken or to be taken at the Site. EPA's approval of any transfer shall not constitute a finding or warranty that the planned or actual subsequent use of the property will not interfere with the response actions taken or to be taken at the Site. In the event of such transfer, all of the Settling Defendant's obligations pursuant to this Consent Decree shall continue to be met by the Settling Defendant, or if EPA, after opportunity for review and comment by the State, approves in writing, shall continue to be met by the Settling Defendant and the grantee. However, (1) in no event shall the transfer of any interest in the property by Settling Defendants relieve Settling Defendants of their obligations under Section

V of this Consent Decree, and (2) any transfer of the property, or any portion thereof, shall take place only if the grantee agrees, as a part of the agreement to purchase or otherwise obtain the property, that it will provide access and comply with any covenants, conditions, and restrictions to be determined by EPA to be necessary with respect to the property transferred. Any deed, title, or other instrument of conveyance shall contain a notice that the property is the subject of this Consent Decree.

b. Settling Defendants shall cooperate fully in the implementation of all response actions at the Site, and recognize that response actions may be performed by contractors, consultants, agents, or authorized representatives of EPA, the State, or other potentially responsible parties under the terms of a consent decree or an administrative order. Settling Defendants further agree neither to interfere with such response actions nor take actions at the Site that are inconsistent with any response action selected by EPA and carried out by any person. Settling Defendants recognize that the implementation of response actions at the Site may interfere with Settling Defendants' use of their property and other property owned or controlled by the Settling Defendants, and that certain remedial activities at the Site may interrupt or interfere with use of or activities on their property and other property owned or controlled by the Settling Defendants.

c. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of Settling Defendants to comply with this Consent Decree.

XIII. ACCESS TO INFORMATION

30. Settling Defendants shall provide to EPA and the State, upon request, copies of all

documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

31. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing documents, they shall provide Plaintiffs with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a

description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

32. No claim of confidentiality shall be made with respect to any data, including but not limited to all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIV. RETENTION OF RECORDS

33. Until five (5) years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site.

34. After the conclusion of the document retention period in the preceding Paragraph, Settling Defendants shall notify EPA, DOJ, and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, DOJ, or the State, Settling Defendants shall deliver any such records or documents to EPA or the State. Settling

Defendants may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendants shall retain all records and documents that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

35. By signing this Consent Decree, each Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Settling Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

d. with respect to Settling Defendant Smith, the information provided to the United States fairly and accurately set forth his financial condition at the time it was provided by said Settling Defendant and that said Settling Defendant's ability to pay has not materially increased between the time such financial information was submitted to the United States and the time that Settling Defendant executes this Consent Decree.

36. The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has fully complied with any and all EPA and State requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XV. NOTICES AND SUBMISSIONS

37. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent

Decree with respect to the United States, EPA, the Settling Federal Agencies, the State, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611

Re: DJ # 90-11-2-06059

and

Chief, Environmental Defense Section
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 23986
Washington, D.C. 20026-3986

Re: DJ # 90-11-6-228

and

Chief, Superfund Legal Office
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
1 Congress Street, Suite 1100 - Mail Code SES
Boston, MA 02114-2023.

Attn: Eastern Surplus Company Site Attorney

and

Chief, Connecticut/Maine/Vermont Superfund Section
Office of Site Remediation and Restoration
U.S. Environmental Protection Agency, Region I
1 Congress Street, Suite 1100 - Mail Code HBT
Boston, MA 02114-2023.

Attn: Eastern Surplus Company Site Project Manager

As to the State:

Dennis J. Harnish
Assistant Attorney General
State of Maine
Department of the Attorney General
6 State House Station
Augusta, ME 04333-0006

and

Rebecca Hewett
Project Manager
Maine Department of Environmental Protection
Bureau of Remediation and Waste Management
Division of Remediation
State House Station 17
Augusta, ME 04333

As to Settling Federal Agencies:

Judy Malmquist, Esq.
Office of Counsel
Defense Logistics Agency
Defense Reutilization and Marketing Service
74 Washington Ave., North, Suite 6
Battle Creek, MI 49017-3092
(616) 961-5988

Sharon Chen, Esq.
Office of General Counsel
General Services Administration
1800 F Street, NW, Room 4131
Washington, DC 20405
(202) 501-0298

As to Settling Defendants:

Harry J. Smith, Jr.
Route 191
Meddybemps, ME 04657

Terrell L. and Lisa J. Lord
Route 191
Meddybemps, ME 04657

XVI. MODIFICATION

38. No material modification shall be made to this Consent Decree without the written agreement of the Parties and the written approval of the Court. Modifications to this Consent Decree that do not materially alter the Consent Decree may be made by written agreement of the United States, the State, and the Settling Defendant(s) affected by the modification, and shall become effective upon filing with the Court. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XVII. RETENTION OF JURISDICTION

39. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION/APPENDICES

40. a. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

b. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is a map of the Site.

"Appendix B" is a delineation of the property boundaries of the property to be conveyed by

each Settling Defendant.

"Appendix C" is a delineation of the property of each Settling Defendant subject to the access provisions of this Consent Decree.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

41. This Consent Decree shall be lodged with the Court for a period of not fewer than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that this Consent Decree is inappropriate, improper, or inadequate within the meaning of Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2). The State may withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations showing that the Consent Decree violates State law. The United States reserves the right to challenge in court the State's withdrawal from the Consent Decree, including the right to argue that the requirements of State law have been waived, preempted, or otherwise rendered inapplicable by federal law. The State reserves the right to oppose the United States' position taken in opposition to the proposed withdrawal. In the event of the United States' withdrawal from this Consent Decree, the State reserves its right to withdraw from this Consent Decree. Settling Defendants consent to the entry of this Consent Decree without further notice.

42. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party, and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XX. EFFECTIVE DATE

43. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XXI. SIGNATORIES/SERVICE

44. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, and the Assistant Attorney General of the State of Maine certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

45. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

46. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XXII. FINAL JUDGMENT

47. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the Settling Federal

Agencies, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 1998.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matters of United States v. Harry J. Smith, Jr., et al. and State of Maine v. Harry J. Smith, Jr., et al., relating to the Eastern Surplus Company Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

Peter K. Kautsky
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-3907

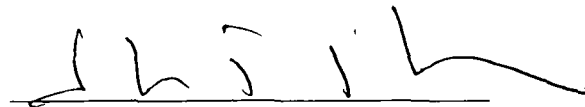
Date: _____

Joshua E. Swift
Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 616-7501

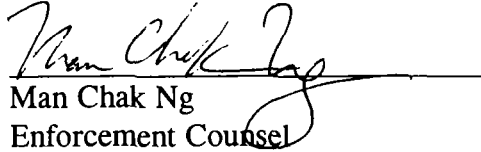
Jay P. McCloskey
United States Attorney

David R. Collins
Assistant United States Attorney
United States Department of Justice
United States Attorney's Office
District of Maine
P.O. Box 9718
Portland, Maine 04104-5018

Date: 12/9/98



John P. DeVillars
Regional Administrator
EPA Region I, New England Office
U.S. Environmental Protection Agency
Boston, MA 02114-2023

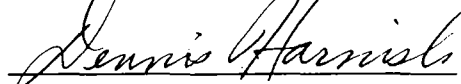


Man Chak Ng
Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency
1 Congress Street, Suite 1100
Boston, MA 02114-2023

THE UNDERSIGNED PARTY enters into this Consent Decree in the matters of United States v. Harry J. Smith, Jr., et al. and State of Maine v. Harry J. Smith, Jr., et al., relating to the Eastern Surplus Company Superfund Site.

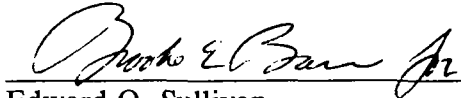
Date: 8/13/98

FOR THE STATE OF MAINE



Dennis J. Harnish
Assistant Attorney General
State of Maine
Department of the Attorney General
6 State House Station
Augusta, ME 04333-0006

Date: 8/13/98



Edward O. Sullivan
Commissioner
Maine Department of Environmental Protection

THE UNDERSIGNED PARTY enters into this Consent Decree in the matters of United States v. Harry J. Smith, Jr., et al. and State of Maine v. Harry J. Smith, Jr., et al., relating to the Eastern Surplus Company Superfund Site.

Date: 12-7-98

FOR DEFENDANT HARRY J. SMITH, JR.

Harry J. Smith Jr.
Name

Title

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: SELF

Title: _____

Address: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matters of United States v. Harry J. Smith, Jr., et al. and State of Maine v. Harry J. Smith, Jr., et al., relating to the Eastern Surplus Company Superfund Site.

FOR DEFENDANT TERRELL J. LORD

Date: 11-18-97

Terrell J. Lord
Name

Owner
Title

FOR DEFENDANT LISA J. LORD

Date: 11/15/98

Lisa J. Lord
Name

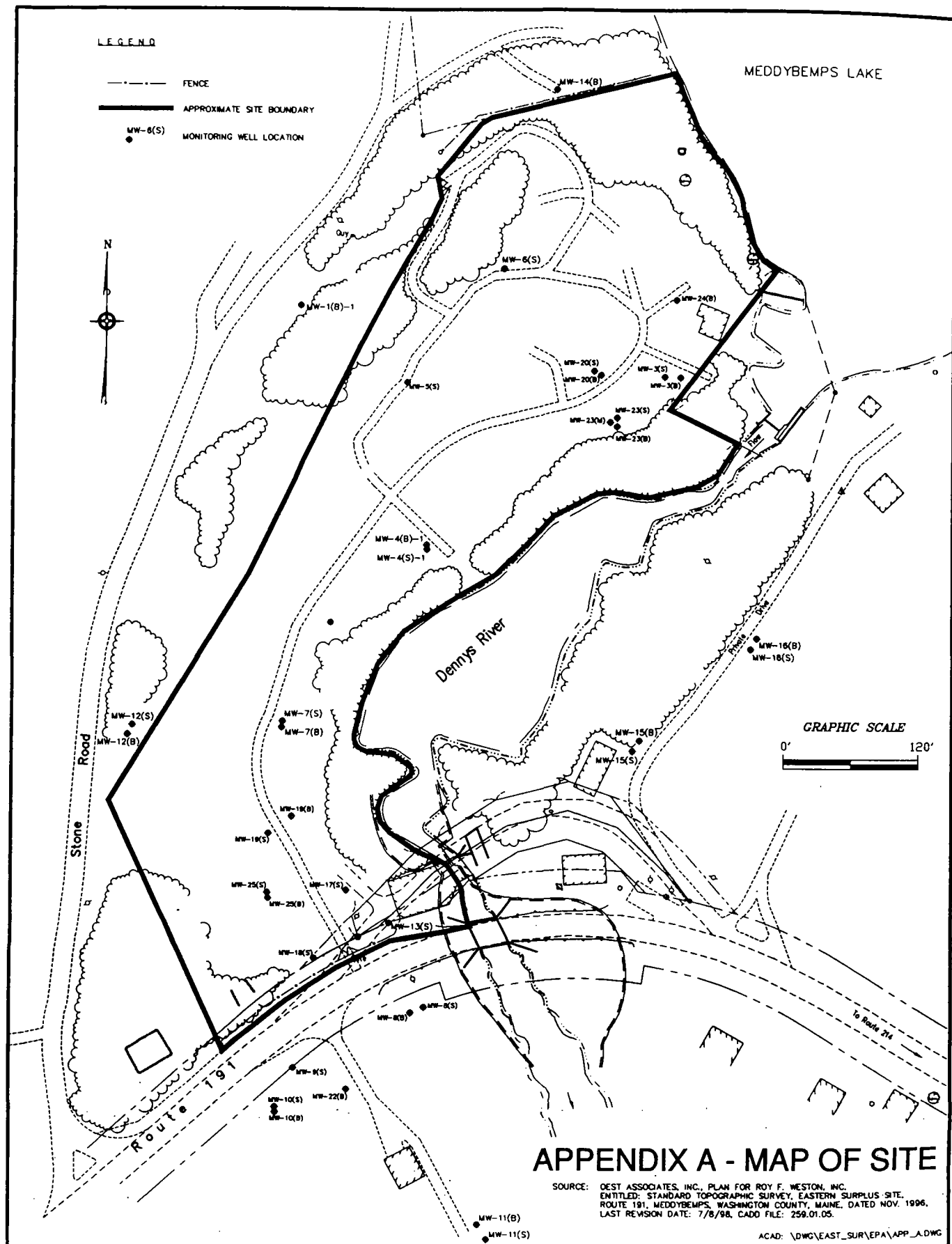
Owner
Title

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Name: Lisa + Terrell Lord

Title: Owner

Address: Box 102A, Meddybemps, ME 04657

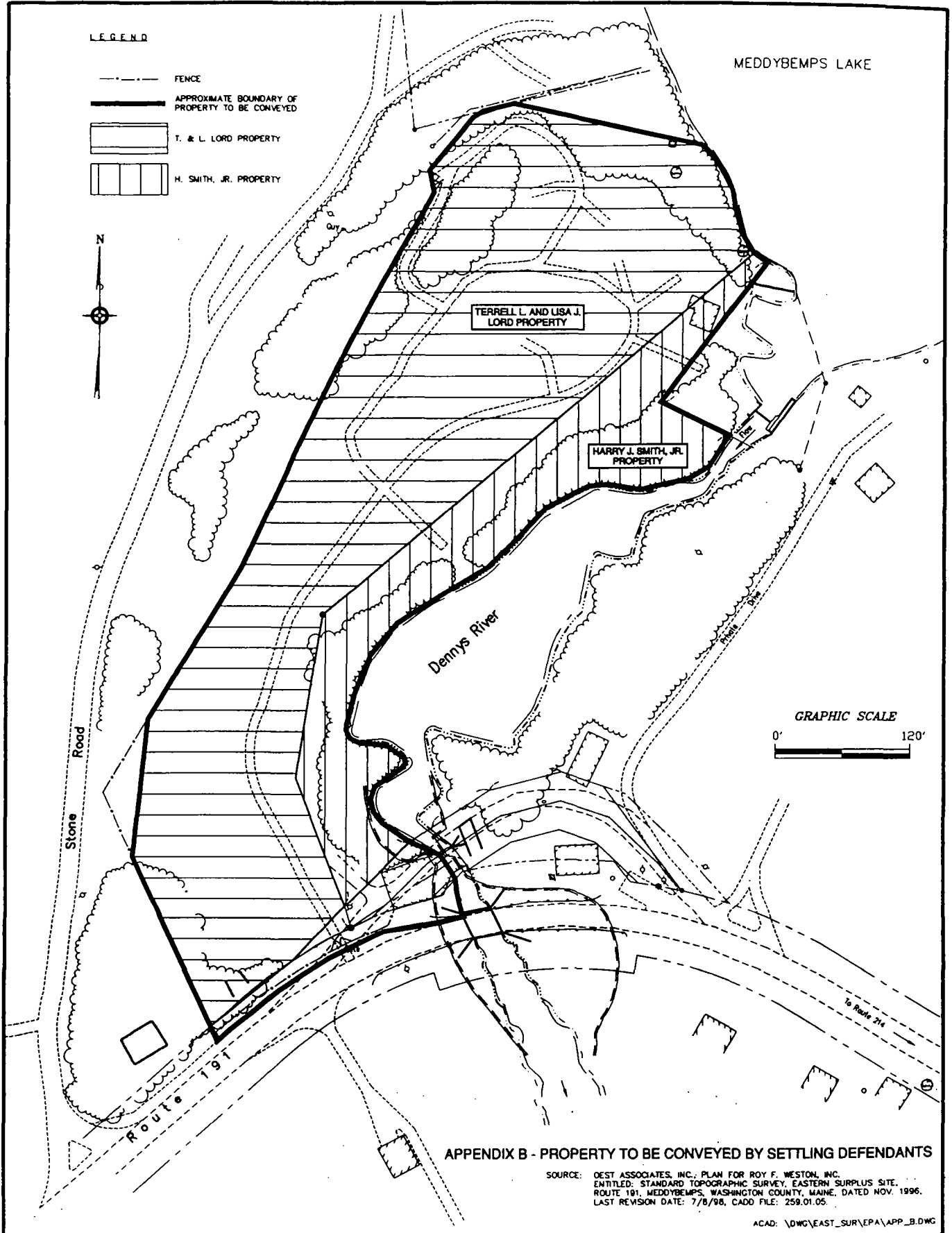


LEGEND

- FENCE
- APPROXIMATE BOUNDARY OF PROPERTY TO BE CONVEYED
- T. & L. LORD PROPERTY
- H. SMITH, JR. PROPERTY



MEDDYBEMPS LAKE



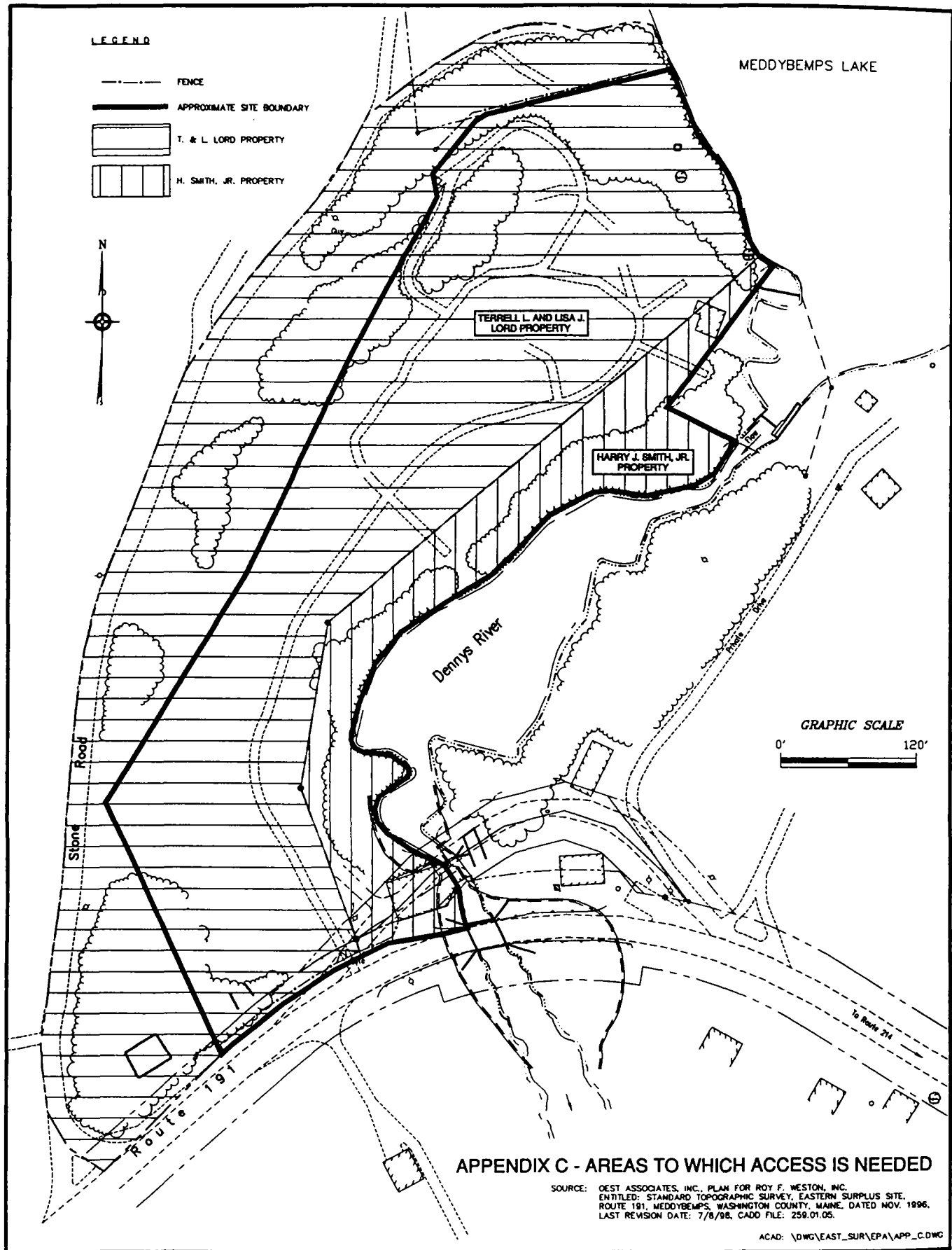
GRAPHIC SCALE

0' 120'

APPENDIX B - PROPERTY TO BE CONVEYED BY SETTLING DEFENDANTS

SOURCE: OEST ASSOCIATES, INC., PLAN FOR ROY F. WESTON, INC.
 ENTITLED: STANDARD TOPOGRAPHIC SURVEY, EASTERN SURPLUS SITE,
 ROUTE 191, MEDDYBEMPS, WASHINGTON COUNTY, MAINE, DATED NOV. 1996.
 LAST REVISION DATE: 7/8/98, CADD FILE: 259.01.05.

ACAD: \DWG\EAST_SUR\EPA\APP_B.DWG





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
1 CONGRESS STREET, SUITE 1100, BOSTON, MA 02114-2023

DEC 16 1988

Honorable Lois J. Schiffer
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Re: Referral of CERCLA Settlement--Eastern Surplus Company
Superfund Site, Meddybemps, Maine

Dear Ms. Schiffer:

With this letter, I enclose a Litigation Report and Settlement Analysis and a CERCLA Consent Decree for the Eastern Surplus Company Superfund Site in Meddybemps, Maine (the "Site").

Under the proposed Consent Decree, the Settling Defendants, Site property owners, agree to convey Site properties to the State of Maine (the Maine Atlantic Salmon Authority). In addition, one group of Settling Defendants agrees to provide access to property adjacent to the Site needed by EPA to perform the response actions and agrees to put in place deed restrictions if deemed necessary by EPA.

The proposed Consent Decree cashes out the Settling Federal Agencies by obligating them to pay EPA \$11,287,000 to be deposited into the Eastern Surplus Special Account. This amount includes \$10,180,000, which is eighty-five percent (85%) of the estimate of all of EPA's past and future costs for performing the RI/FS, NTCRA and future remedial action (\$11,977,000), and \$1,107,000 as a premium for a time limitation on the recovery of

additional payments. If EPA costs exceed the estimate of \$11,977,000 plus interest, then the Consent Decree allows EPA to recover eighty-five percent (85%) of the amount in excess for up to ten (10) years after the certification of the remedial action. It is contemplated that money will come from the Judgment Fund (established by 31 U.S.C. § 1304) to pay for the Settling Federal Agencies' obligations under the Consent Decree.

Likewise, there are parallel payment provisions for the Settling Federal Agencies to pay the State for its remedial action cost-share and O&M obligations. In addition, the proposed Consent Decree includes assurances from the State of Maine that it will accept the Site property, provide the 10% cost share for any future remedial action, and perform any required operation and maintenance.

In exchange for these commitments, the United States grants the Settling Defendants the standard releases under CERCLA Sections 106 and 107. The Settling Federal Agencies are granted similar releases, based on the draft model consent decree language for Federal PRPs (as of June 22, 1998). The State of Maine is a signatory to the Consent Decree and grants the Settling Defendants and the Settling Federal Agencies releases under state law. More specific details of the entire proposed settlement are contained in the attached Consent Decree and Litigation Report and Settlement Analysis.

The Region has consulted throughout the negotiations with EPA Headquarters on this settlement. Pursuant to the September 30, 1998 Revision to OECA Concurrence and Consultation Requirements for CERCLA Case and Policy Areas, EPA Headquarters' concurrence is not required for this settlement. As such, the Region is simultaneously sending a copy of these documents to the Office of Enforcement and Compliance Assurance.

Honorable Lois J. Schiffer
Page 3

Finally, I would like to note that Peter Kautsky and Joshua Swift of your staff played integral roles in arriving at this settlement, and that the fair manner with which this settlement deals with EPA's and the Settling Federal Agencies' concerns may be attributed, in part, to the close working relationship between EPA and DOJ personnel. If any member of your office has any questions regarding this referral, please have him or her contact Man Chak Ng, Enforcement Counsel, at 617-918-1785.

Sincerely,

A handwritten signature in black ink, appearing to read "John P. DeVillars". The signature is stylized with a large, sweeping "J" and "D".

John P. DeVillars
Regional Administrator

Enclosure

cc: Steven A. Herman, Assistant Administrator
Office of Enforcement and Compliance Assurance
Bruce Marshall, Chief, Superfund Enforcement Support Section
Janice Linett, Office of Site Remediation Enforcement,
Regional Support Division, OECA
Man Chak Ng, Enforcement Counsel
Edward Hathaway, Remedial Project Manager
Peter K. Kautsky, EES, Department of Justice
Joshua E. Swift, EDS, Department of Justice